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SUBJECT: DRAFT AMENDMENTS TO ADMINISTRATIVE DETENTION
REGULATIONS

¶1. (SBU) Summary: On November 9, 2009 the Legislative Affairs Office of the Chinese State Council released for public comment proposed changes to regulations regarding detainees under special administrative detention. The draft contained a list of proposed changes that seemed to be aimed at assuaging the growing criticism of Chinese security officials in the wake of high-profile scandals involving police shakedowns and brutality towards detainees. Amendments include provisions addressing issues such as detainee living quarters and informing detainees of their rights. In the draft regulations, detainees are defined as individuals under administrative detention by police or state security agencies, the courts and immigration authorities. The public comment period closed on November 30, 2009 and, to date, the Chinese government has not indicated when the regulations will be promulgated. End Summary.

Draft Regulations on Administrative
Detention Released

¶2. (SBU) On November 9, the Legislative Affairs Office of the Chinese State Council released proposed changes to regulations regarding the treatment of individuals under special administrative detention in Chinese detention facilities. The Ministry of Public Security reportedly drafted the document in consultation with legal experts and scholars in the wake of a number of high profile cases, widely reported in the domestic Chinese media, of abuses of petitioners, demonstrators and other administrative detainees held in so-called "black jails." If ratified, these regulations would replace the current Public Security Administration Punishments Law that took effect March 1, 2006.

¶3. (SBU) For the purpose of the draft, detainees were defined as individuals under special administrative detention by police or state security agencies, persons given judicial detention by a court, foreigners held under suspicion of breaking China's border exit and entry laws and persons given detention for breaking Chinese Law on Assemblies, Processions and Demonstrations or Martial Law. The release of the draft regulations was initially met by confusion among the media and legal experts. Some western media outlets mistakenly stated that the proposed changes would affect all individuals taken into custody by police, state security agencies or other agencies, to include those charged with criminal offences.

¶4. (SBU) The proposed amendments would not apply to individuals detained on routine criminal charges who make up the majority of those individuals under police detention. They also do not apply to those in the Reform through Labor system. A local legal expert told us that his office had received numerous calls from other agencies confused by the definition of the term "detainee."

New Regulations

¶5. (SBU) While the proposed regulations contain 39 clauses and cover topics as varied as guidelines for detainees' living quarters and release of detainees found to be wrongly confined, some of the most significant provisions include informing detainees of their rights upon being taken into custody, clearly stating that police cannot charge detainees for food or lodging, and prohibiting forced labor. The draft also lays out procedures for notifying relatives or legal counsel after persons are detained, granting temporary release under limited circumstances, and handling the death of a detainee.

Next Steps

¶6. (SBU) After releasing the draft, the State Council asked for public feedback on the proposed changes. A website, mailing address and email address were established to collect opinions and comments. A deadline of November 30, 2009, was given for those wanting to respond. To date, the Chinese government has neither released any information about the number or nature of the responses that it received, nor indicated when the regulations will be promulgated.
HUNTSMAN